In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-597

GARY MINKIN, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that the mailing involved here was insufficiently connected to the fraudulent scheme to bring him within the ambit of the mail fraud statute, 18 U.S.C. 1341.

After a jury trial in the United States District Court for the Eastern District of Missouri, petitioner was convicted of mail fraud, in violation of 18 U.S.C. 1341. He was sentenced to three years' imprisonment, execution of all but six months of the sentence was suspended, and he was placed on probation for a period of two and one-half years. The suspension was conditioned upon petitioner paying $2,200 to the victim of the offense (Pet. 3). The court of appeals affirmed (Pet. App. 1a-15a) in an opinion reported at 504 F.2d 350.

The evidence at trial demonstrated that, in the course of his salvage business, petitioner had received a 1967 Cadillac Eldorado that had been virtually destroyed by fire. Acting with the complicity of a claims supervisor for the Hartford Insurance Company by the name of Dace,[1] petitioner caused the vehicle to be insured by Hartford upon the representation that it was in good mechanical condition and free from any evidence of physical damage. Petitioner thereafter claimed a total loss on the vehicle, representing that it had been stolen and destroyed by fire. Dace assisted petitioner in his scheme by inserting in the insurance file a fictitious police report that the car had been stolen and thereafter recovered in its burnt condition. The claim was paid. In the early course of these dealings, petitioner mailed his application for a policy to an insurance broker in a St. Louis suburb, who in turn mailed it to the Hartford regional office in downtown St. Louis, a distance of some twelve miles. This latter mailing was the subject of the charge (Pet. App. 1a-3a, 5a).

The federal mail fraud statute, 18 U.S.C. 1341, provides that anyone who, having devised a fraudulent scheme, either uses the mails or causes anything to be mailed "for the purpose of executing such scheme or artifice

---

[1]Dace was named in 24 counts of a separate but related 26-count indictment, charging an ongoing scheme to defraud Hartford Insurance Company by approving fraudulent insurance claims. He entered pleas of guilty to three counts charging violations of the same statute involved here—18 U.S.C. 1341—and was sentenced to a total of ten years' imprisonment. In the face of an allegation that the trial court abused its sentencing discretion, the court of appeals affirmed Dace's conviction (502 F.2d 897), and this Court denied certiorari. *Schneider* and *Dace* v. *United States*, certiorari denied, January 20, 1975, Nos. 74-491, 74-5608.

or attempting so to do" is guilty of a federal offense. One causes the mails to be used when he "does an act with knowledge that the use of the mails will follow in the ordinary course of business, or where such use can reasonably be foreseen, even though not actually intended." *Pereira* v. *United States*, 347 U.S. 1, 8-9. Here, petitioner mailed his policy application to a broker in St. Louis County, knowing that it would be forwarded to the Hartford regional office in downtown St. Louis. The jury could properly infer that it was reasonably foreseeable by petitioner that such forwarding would be by mail, at trifling cost and a minimal expenditure of time, rather than by the more cumbersome means of hand delivery. The issue was therefore one for the jury, and it has been determined adversely to petitioner's contention.

Petitioner's reliance on *United States* v. *Maze*, 414 U.S. 395, is misplaced. The Court in *Maze* fully recognized the validity of the *Pereira* reasoning (414 U.S. at 399), but it distinguished the credit card scheme involved in *Maze* because the intended fraud was fully accomplished *before* the mails were ever used; and the mailings were therefore not sufficiently closely related to the scheme. Here, on the contrary, as the court of appeals properly concluded, the mailing of the application was an integral part of the scheme and "for the purpose of executing such scheme"—a valid insurance contract being the necessary basis for petitioner and Dace to present and process the fraudulent claim. Unlike the situation in *Maze*, the scheme in this case had not reached fruition before the mailing, and transmission of the application was an integral part of the criminal plan. Cf. *United States*

v. *Flaxman*, 495 F.2d 344, 348 (C.A. 7), certiorari denied, No. 73-1894, November 25, 1974; *United States* v. *Isaacs*, 493 F.2d 1124, 1151-1152 (C.A. 7), certiorari denied, November 25, 1974, No. 73-1894; *United States* F. 2d 981, 984 (C.A. 8); *United States* v. *MacKay*, 491 F.2d 616, 624 (C.A. 10), certiorari denied, 416 U.S. 972.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

JANUARY 1975.

---

[2]It is immaterial that a binder had already been issued. Such extension of temporary coverage is customary to protect the client during the interim before a formal contract can be executed. *Carideo* v. *Phoenix Assurance Co. of New York*, 317 F. Supp. 607, 610 (E.D. Pa.).